

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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NUBAI GLOBAL INVESTMENT  
LIMITED,

Case No. 18-CV-2228 (PJS/DTS)

Plaintiff,

ORDER

v.

THOMAS CLARKE,

Defendant.

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Douglas L. Elsass, Benjamin C. Johnson, and Sarah B. Riskin, NILAN JOHNSON LEWIS PA, for plaintiff.

David Bradley Olsen, Stuart T. Williams, and Benjamin J. Hamborg, HENSON & EFRON, P.A.; Gilbert R. Saydah Jr. and Alan R. Arkin, CKR LAW LLP, for defendant.

This matter is before the Court on the motion of plaintiff Nubai Global Investment Limited (“Nubai”) for a preliminary injunction against defendant Thomas Clarke.<sup>1</sup> The Court held a hearing on the motion on August 10, 2018.

The Court finds that it is very likely that Nubai will succeed in proving that it has been the sole member of Chippewa Capital Partners, LLC (“Chippewa”) since June 1, 2018; that Clarke did not have authority to remove any director of Chippewa or Mesabi Metallics Company LLC (“Mesabi”) on July 22, 2018; that Clarke was removed from the

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<sup>1</sup>Nubai states that it is seeking a temporary restraining order. Because Clarke has been given notice and an opportunity to respond, however, the Court treats Nubai’s motion as a motion for a preliminary injunction. *See* Fed. R. Civ. P. 65(a), (b).

Board of Directors of Chippewa, from the Board of Directors of Mesabi, and from all other positions with Chippewa and Mesabi on July 23, 2018; and that Clarke has no authority whatsoever to act on behalf of Chippewa or Mesabi. The Court therefore finds that it is likely that Nubai will prevail in this litigation.

The Court further finds that Nubai will suffer irreparable harm if Clarke is not enjoined from continuing to purport to act on behalf of Chippewa and Mesabi; that the harm to Nubai would substantially outweigh any harm to Clarke from being forbidden to purport to operate companies that he no longer owns and in which he no longer holds any position; and that enjoining Clarke is in the public interest.<sup>2</sup>

For these reasons, and for the reasons that were stated on the record at the August 10 hearing and that will be further explained in a written opinion to be issued shortly, IT IS HEREBY ORDERED THAT:

1. Plaintiff Nubai Global Investment Limited's ("Nubai's") motion for a preliminary injunction [ECF No. 3] is GRANTED.
2. Defendant Thomas Clarke is hereby ENJOINED AND PROHIBITED from:

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<sup>2</sup>Under Fed. R. Civ. P. 65(c), the Court is required to order Nubai to "give[] security in an amount that the court considers proper to pay the costs and damages" that Clarke will have sustained if he is later found to have been wrongfully enjoined from purporting to operate Chippewa and Mesabi. Nubai asserts that no such security is necessary. Clarke did not argue to the contrary in his memorandum, nor has Clarke introduced any evidence of whether or how he would be damaged. The Court nevertheless assumes that Clarke will incur some incidental costs in complying with the injunction, and therefore orders Nubai to post security in the amount of \$100,000.

- a. representing himself as an owner, director, governor, officer, employee, or agent of Chippewa Capital Partners, LLC (“Chippewa”) or Mesabi Metallica Company LLC (“Mesabi”);
  - b. taking any action on behalf of Chippewa or Mesabi, including, but not limited to, purporting to represent either company in communications with the Minnesota Department of Natural Resources, the Office of the Governor of the State of Minnesota, or the noteholders of Mesabi;
  - c. giving direction or instruction to any director, governor, officer, employee, agent, lawyer, or advisor of Chippewa or Mesabi;
  - d. disclosing any confidential information of Chippewa or Mesabi;
  - e. using, occupying, or accessing any of Chippewa’s or Mesabi’s offices, premises, computers, or computer or communication systems without the prior written permission of Nubai; and
  - f. selling any interest in or offering securities of any kind in Chippewa or Mesabi.
3. Clarke is further ORDERED to do the following by 5:00 pm C.D.T. on Monday, August 13, 2018:

- a. disclose to Nubai all user names and passwords held by him relating to Chippewa or Mesabi; and
  - b. return to Nubai any and all of Chippewa's and Mesabi's tangible and intangible properties in his possession or control.
4. Nubai is ORDERED to post security in the amount of \$100,000 by 5:00 pm C.D.T. on Monday, August 13, 2018.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 10, 2018

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge